

DOCKET FILE COPY ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Section 26 of the
Cable Television Consumer Protection
and Competition Act of 1992

Inquiry into Sports Programming
Migration

PP Docket No. 93-21

COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.

12-14-93
U.S. DEPT. OF JUSTICE

079

David B. Gluck
Mark R. Boyes
600 Las Colinas Boulevard
Suite 2200
Irving, Texas 75039
(214) 401-0099

Attorneys for
Affiliated Regional
Communications, Ltd.

March 29, 1993

TABLE OF CONTENTS

Summary	ii
Description of ARC And Its Interest In This Proceeding	1
Preliminary Statement	3
I. Regional Sports Programming Services Have Expanded The Sports Programming Available To Television Viewers	4
A. National Football League	5
B. Major League Baseball	5
C. National Basketball Association	6
D. National Hockey League	7
E. College Football And Basketball	8
II. ARC Has Not Entered Into Preclusive Contracts That Restrict The Availability Of Local College Sporting Events	10
III. Regional Sports Networks Provide Coverage Of A Wide Variety Of Previously Untelevised Professional And Amateur Sporting Events	12
A. International Professional Sports	12
B. American Professional Sports	13
C. Collegiate Sports	14
D. High School Sports	15
E. Other Sports	15
IV. In Addition To Expanding Programming Alternatives, Regional Sports Networks Provide A Valuable Contribution To Diversity And Localism	16
Conclusion	18

SUMMARY

Affiliated Regional Communications, Ltd. ("ARC") has ownership interests in six regional sports programming services and in national programming services which provide "backdrop" feeds to fifteen regional sports service affiliates. The regional sports services sell programming to cable and other multichannel video programming distribution system operators within their service areas. A division of ARC serves HSD owners either directly or through third-party wholesale program packagers.

Regional sports programming services affiliated with ARC carry a variety of professional sporting events, including Major League Baseball, National Basketball Association, National Hockey League and collegiate men's football and basketball games. However, the sports programming which ARC's affiliated networks carry has not migrated from broadcast television but has been added to over-the-air carriage. The national television networks and local broadcasters continue to air a substantial proportion of professional football, baseball and basketball and collegiate football and basketball games. Finally, based upon inquiries to contract management personnel, ARC believes that it has not entered into any agreements which constitute preclusive contracts under Section 26(c).

In addition to the selected professional and collegiate sports which are the focus of the Commission's inquiry, regional sports programming networks carry a host of profes-

sional, collegiate, high school and other sporting events in which broadcasters historically have shown no interest. This expanded sports coverage has made a significant contribution to the goals of diversity and localism which the Commission consistently has recognized to be in the public interest.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

MAR 29 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 26 of the) PP Docket No. 93-21
Cable Television Consumer Protection)
and Competition Act of 1992)
)
Inquiry into Sports Programming)
Migration)
)

COMMENTS OF
AFFILIATED REGIONAL COMMUNICATIONS, LTD.

Affiliated Regional Communications, Ltd. ("ARC") submits these comments in response to the Commission's Notice of Inquiry ("NOI") in this proceeding. ARC's extensive experience in providing regional sports programming services confirms that there has been no significant "migration" of sports programming from broadcast television to its regional services. Instead, the quantity and diversity of sports programming available to viewers over both broadcast and cable television have continued to expand.

Description of ARC And Its Interest In This Proceeding

ARC provides regional and national sports programming for distribution to cable operators and other multi-channel video programming distributors. ARC has ownership interests in six regional sports programming services which produce and distribute programming featuring a variety of

sporting events, including professional and collegiate contests in their respective regions. Together with NBC Cable Holdings and Rainbow Holdings, Inc., ARC has an ownership interest in Prime SportsChannel Networks, which distributes two national satellite sports programming networks, SportsChannel America and Prime Network. Nine additional regional sports programming services are affiliated with Prime Network.¹

The regional sports services sell programming to operators of cable and other multichannel video programming distribution systems within their service areas. ARC has a separate division, Satellite Sports Networks ("SSN"), which serves home satellite dish ("HSD") owners either directly or through agreements with other wholesale program packagers. The national networks currently serve as "backdrop" feeds, providing supplementary programming to the affiliated regional services. Prime Network is also available to HSD owners.

¹ The six regional sports programming services in which ARC has an ownership interest and the nine other regional services which are affiliated with Prime Network and their respective geographic service areas are listed in Exhibits 1 and 2. The programming on these regional services generally includes professional baseball, basketball and/or hockey, collegiate contests, and a variety of other sporting events and sports-related programs.

Preliminary Statement

In this proceeding, the Commission has been charged with determining on a sport-by-sport basis whether sports programming has "migrated" from broadcast television to cable programming networks and pay-per-view services. The Commission has focused its inquiry on Major League Baseball, the National Football League, the National Basketball Association, the National Hockey League, and college football and basketball. In performing this empirical analysis, the Commission seeks data on the total numbers of available games and the numbers of games exhibited locally, regionally and nationally on broadcast television, cable networks, and pay-per-view services. In addition to evaluating trends in actual carriage, the Commission seeks to determine whether sports leagues and/or teams enter into "preclusive contracts" with broadcasters or cable programmers and, if so, the extent of such contracts.

ARC respectfully submits that the statistical data developed in the Commission's study will demonstrate the positive "economic and social consequences" of the development and expansion of regional sports programming services:

From the viewpoint of consumer welfare, it is important to assess whether the availability of subscription media for sports programming has increased or decreased total output, in addition to evaluating its effect on the output of broadcast sports programming. We seek comment on the extent to which subscription media have made available programming that otherwise would not have been

transmitted via video at all. In sum, is the public better served by the current mix of broadcast and subscription exhibition than it was before?

NOI at ¶30 (note omitted). Regrettably, both the legislative history of Section 26 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") and the Commission's NOI appear to presume the existence of sports programming "migration" from broadcast television to cable programming services. See H.R. Conf. Rep. No. 862, 102d Cong., 2d Sess. 100-101 (1992). However, based upon its own extensive experience and prior analysis, ARC believes that sports programming has not migrated substantially from broadcast television to cable programming services. Cable carriage of sporting events has greatly expanded not only the quantity, but also the diversity, of sporting events available to the viewing public.

I. Regional Sports Programming Services Have Expanded The Sports Programming Available To Television Viewers.

In each of the categories of sports upon which the Commission focuses in this proceeding, carriage by regional sports programming services has not caused any significant migration of sports programming from broadcast television. Indeed, the broadcast networks remain the preferred distribution media, and a substantial number of sporting events remain available to and carried by local broadcast stations.

A. National Football League

ARC's regional networks have not carried any regular season professional football games or play-off games. Several of its networks have sporadically carried one or two pre-season professional football games. For example, the Sunshine Network ("Sunshine") carried a Miami Dolphins pre-season game, and, on one occasion, the Empire Sports Network carried a Buffalo Bills pre-season game. In short, ARC's regional sports networks have not carried professional football contests, and there can be no question of migration.

B. Major League Baseball

Major League Baseball has accorded priority to its rights agreement with the CBS broadcast network and then to its agreement with ESPN. However, ARC's regional sports services can and do enter into various agreements with individual professional teams. Typically, those teams have continued to enter into rights agreements with local broadcasters pursuant to which broadcasters have continued to televise the same number of games, if not more, than they televised before the regional network agreements were reached. Consequently, agreements between ARC-affiliated regional networks and Major League Baseball teams have not reduced the number of games carried by local broadcasters.

For example, Home Sports Entertainment ("HSE"), a regional network affiliated with ARC which serves the

Southwestern United States, carries 50 home games of both the Houston Astros and Texas Rangers. However, local broadcasters have continued to air for each of those teams approximately 70 to 75 away games. Similarly, the Florida Marlins have entered into an agreement with a local broadcaster to air their first home game and 49 away games, while Sunshine will carry 40 home and 20 away games. In contrast, although the Prime Sports Network-Rocky Mountain ("PSN-RM") sought to carry at least some Colorado Rockies games, the Rockies have reached a five-year agreement with a local broadcaster to air at least 77 games -- and up to 110 games -- each season, with none appearing on the regional cable network. Thus, where ARC regional networks have obtained the right to carry the games of local major league teams, they have substantially expanded the number of games available to television viewers without decreasing the number of games carried by over-the-air television.

C. National Basketball Association

The carriage of professional basketball games by ARC's regional sports networks has followed a similar pattern -- local broadcasters have continued to air a substantial number of NBA games while the regional sports networks have expanded the number of televised games. Again, carriage by HSE, PSN-RM and other regional networks provides an illustrative example. HSE carries 40 Houston Rockets home games, 30

to 40 Dallas Mavericks home games, and 15 to 20 San Antonio Spurs games, approximately half of which are home games. Local broadcasters historically have carried and continue to air approximately 25 Mavericks, 40 Rockets, and 15 to 25 Spurs away games. Likewise, Prime Sports Network-Midwest has carried 25 Indiana Pacers home games; PSN-RM has carried 31 (16 home and 15 away) Denver Nuggets games; and Prime Sports Network-Upper Midwest has carried 25 (13 home and 12 away) Minnesota Timberwolves games. For the past three seasons, local broadcasters have continued to air 23 Pacers away games, 25 Nuggets away games, and, since the team's inception, 25 (5 home and 20 away) Timberwolves games. As in the case of Major League Baseball, carriage by regional sports programming services has expanded the sports programming available to television viewers without reducing the number of games carried by broadcast television stations.

D. National Hockey League

The experience of ARC's regional sports programming services has been somewhat different in carrying professional hockey games. It appears that viewer interest in hockey and, consequently, the interest of local broadcasters in carrying it vary substantially among different regions. For example, although the Tampa Lightning sought broadcast coverage, the team could not reach a rights agreement with any local broadcaster. However, in its subsequent agreement with

Sunshine, pursuant to which Sunshine obtained the rights to all Lightning games, the Lightning nonetheless required that Sunshine arrange to have at least 10 Lightning away games aired on broadcast television.

E. College Football And Basketball

The television coverage of collegiate football and basketball games varies greatly among conferences. ARC believes that it has made a substantial contribution to increasing the quantity and diversity of sports programming available to television viewers by carrying games from a number of collegiate conferences which, although important to their respective regions, have not achieved national recognition and popularity. Thus, regional sports networks affiliated with ARC carry, in addition to other sporting events as described infra at 12-16, football and/or basketball games from the numerous collegiate athletic conferences which local broadcasters have been unwilling to air, including, for example, the Southland Conference, the Colorado Athletic Conference, and the Colonial Athletic Association.

The collegiate athletic conferences for which there is both national and widespread regional viewer interest typically market their sports rights in the following priority: (1) national broadcast networks; (2) national cable networks; (3) conference-level syndication among broadcast stations and/or regional cable networks; and (4) individual

member institution arrangements with local broadcast stations and/or regional cable networks. However, even at the conference and individual school levels, many major conferences and schools prefer live carriage of their games by local broadcasters rather than regional cable sports networks.

For example, the Southwest Conference is a member of the College Football Association ("CFA"). Pursuant to the CFA agreement with ABC and ESPN, certain football games involving Southwest Conference teams are televised nationally or regionally. The rights to those conference football games not televised pursuant to the CFA agreement are held by Raycom, Inc. and HSE. Usually, Raycom syndicates the games to broadcast stations for live coverage, while HSE is able to provide cable carriage of the game on a tape-delay basis only. Thus, the regional cable network coverage of Southwestern Conference football games is truly a supplement to national broadcast coverage, national cable coverage and syndicated broadcast coverage of conference football games, all of which take priority over the regional cable network.

Big East and other major conference men's basketball games are televised in a similar fashion. The conferences and their member schools generally give priority to national or regional broadcast network telecasts and/or national cable telecasts on ESPN. Those games not carried nationally or regionally are syndicated to broadcast stations. The schools

generally have preferred broadcast carriage because it provides the broadest possible exposure, enhancing their efforts to attract new students and to reach alumni, and maximizes advertising revenues. Thus, ARC's experience has been that broadcasters generally receive priority with respect to major conference football and men's basketball games which are not being carried nationally or regionally on network television or ESPN.

II. ARC Has Not Entered Into Preclusive Contracts That Restrict The Availability Of Local College Sporting Events.

Section 26(c) of the 1992 Cable Act requires the Commission to determine the extent to which "preclusive contracts between college athletic conferences and video programming vendors" exist and whether such contracts "artificially restrict the availability of local college sporting events for broadcast by local television stations." Preclusive contracts are defined to include "any contract that prohibits:"

(A) the live broadcast by a local television station of a sporting event of a local college team that is not carried, on a live basis, by any cable system within the local community served by such local television station; or

(B) the delayed broadcast by a local television station of a sporting event of a local college team that is not carried, on a live or delayed basis, by any cable system within the local community served by such local television station.

1992 Cable Act, §26(c)(2).

At the outset, the Commission seeks comment on its "tentative assumption" that the references to "cable system" in this definition "suggest that the term 'video programming vendors'...refers to cable networks." NOI at ¶31. As noted by the Commission, "video programming vendors" is not defined in Section 26, and ARC respectfully submits that the Commission should not limit its inquiry solely to cable networks. To the extent that broadcasters sell advertising and may negotiate for monetary or other consideration for retransmission consent, they may be classified as video programming vendors for purposes of Section 26. Further, even if networks and/or broadcasters were outside the definition of "video programming vendors," their contract practices are relevant to determining the competitive effects of the contracts of cable networks and the reasonableness of their contract practices.

Based upon inquiries to contract management personnel, ARC believes that it has not entered into any agreements which constitute preclusive contracts under Section 26(c). The Commission's observation that "cable sports channels" have "historically" entered into such preclusive contracts with college conferences (NOI at ¶32) does not apply to ARC's agreements with collegiate athletic conferences.

III. Regional Sports Networks Provide Coverage
Of A Wide Variety Of Previously Untelevised
Professional And Amateur Sporting Events.

A substantial portion of the programming aired by ARC's regional cable sports networks is comprised of sporting events and programs which have not received broadcast television coverage. This programming includes a wide variety of sports, ranging from international professional sporting events to local high school contests. Thus, ARC's regional sports networks expose viewers to new and different sports and provide television exposure for "alternative" sports -- and for local athletes and events -- which they would not otherwise receive on broadcast television.

The breadth of "alternative" sports programming available on regional cable sports networks is illustrated by the following events and programs available this month on HSE.²

A. International Professional Sports

1. British Soccer -- Over 20 hours of coverage of British soccer, including at least 5 separate games and several half-hour highlights shows.
2. International Rodeo -- Coverage of the International Finals Rodeo from Oklahoma City and the Bullriders Only Rodeo from San Diego. HSE also provides highlight coverage of the American Cowboy Association Rodeo Championship from College Park, Georgia.

² The events and times discussed below include events which are covered live or shown through same-day delay, delayed-tape, or reruns.

3. Golf -- Highlights of the Heineken International Golf Classic from Perth, Australia. HSE also provided coverage of the Dan Marino Charity Golf Classic from Fort Lauderdale, Florida.
4. Australian Cup Yacht Racing -- Highlights of the Omega Australia Cup yacht races.

B. American Professional Sports

Aside from the major professional sports coverage described supra at 5-8, HSE provides coverage of a wide variety of "alternative" American professional sports events, including:

1. Lacrosse -- Approximately 30 hours of Major Indoor Lacrosse, featuring 5 different games, including 2 play-off games.
2. Volleyball -- Approximately 15 hours of professional volleyball, including AVP Indoor Volleyball from Madison Square Garden and AVP Miller Pro-Lite Beach Volleyball from Honolulu.
3. Surfing -- Highlights of the Budweiser Professional Surfing Tour from Pismo Beach, California.
4. Skiing -- Coverage of the Volkswagen U.S. Extreme Skiing Championships from Crested Butte, Colorado. HSE also carries several skiing highlight shows.
5. Skating -- Highlights of the Diet Coke Professional Freestyle Skating Championships from Cincinnati, Ohio.
6. Bowling -- Coverage of the ABC Team Challenge from Seattle, Washington.
7. Tennis -- Coverage of the semi-final matches of the Purex Tennis Championships from Scottsdale, Arizona and the final match of the Virginia

Slims of Houston Tennis Tournament. HSE also airs the IBM/ATP Tour Magazine Show, featuring highlights from the professional tennis tour.

8. Auto Racing -- Approximately 15 hours of auto racing, including the Pontiac Excitement 400 from Richmond, Virginia, the Chili Bowl Midget Nationals, and several auto racing highlight shows.
9. Boxing -- Approximately 20 hours of professional boxing, including weekly "Fight Night" shows.
10. Horse Racing -- Coverage of the Spring Festival of Racing from the New Orleans Fair Grounds.

C. Collegiate Sports

In addition to the major college football and basketball coverage described supra at 8-10, HSE televises a wide variety of collegiate athletic events in which broadcasters have shown little or no interest. Examples of such collegiate events on HSE's March 1993 program schedule include:

1. Women's Basketball -- Over 50 hours of women's basketball, including the Lone Star Conference Women's Basketball Championship, the Southeastern Conference Women's Semi-Final Games, the Big East Women's Championship, the ACC Women's Championship, the Southwestern Conference Women's Semi-Finals, the Metro Conference Women's Championship, the National Junior College Women's Championship, and the NCAA Women's Semi-Final Games. HSE also televises several talk shows featuring women's basketball coaches from Southwestern Conference teams, including the Texas Tech and Louisiana Tech Lady Techsters Coaches Shows.
2. Smaller Conference Men's Basketball -- HSE provides coverage of several men's college basketball tournaments involving conferences

unable to obtain broadcast coverage of their conference tournaments. For example, HSE has televised tournament games involving the Southern Conference, Colonial Athletic Association, and the Southland Conference. HSE also covered the Texas-New Mexico Junior College Championships.

3. Track And Field -- Coverage of the Big Eight Men's Track & Field Championships.
4. Swimming And Diving -- Coverage of men's and women's championship swimming and diving meets for the Big Ten and Big East Conferences.
5. Wrestling -- Coverage of the Big Eight and Big Ten Conference Wrestling Championships.
6. Gymnastics -- Coverage of the Big Ten Women's Gymnastic Championships.
7. Other -- HSE also televises several college baseball, hockey, and women's softball games.

D. High School Sports

HSE also provides television coverage of various high school sports events. For example, during March 1993, HSE provided live coverage of the Texas Boys' High School Division 5A Basketball Championship. The state high school football championship also was covered live last year. HSE also airs a half-hour program each week highlighting Texas high school sports events and reruns that program several times during the week.

E. Other Sports

Finally, HSE airs a wide variety of informational, instructional and talk shows about different sports and

outdoor activities. For example, HSE televises instructional and talk shows on fishing ("Fishing University") and golf ("Golf Breakthroughs"). It also offers several shows -- such as the American Adventurer, Adventures Afield, and the International Sportsman -- geared toward outdoorsmen, hikers and campers. In addition, HSE regularly airs exercise and fitness instruction and information shows, including Prime Bodies, Nordic Trak and Firm Flex.

IV. In Addition To Expanding Programming Alternatives, Regional Sports Networks Provide A Valuable Contribution To Diversity And Localism.

Clearly, regional sports programming services have had positive "economic and social consequences." Regional services have increased the quantity of sports programming available to television viewers without adversely affecting the sporting events available to over-the-air broadcasters. Expansion -- not migration -- of sports programming has occurred.

Moreover, regional sports services have fostered localism and diversity, which both Congress and the Commission have recognized as important public interest goals. The promotion of a "diversity of views and information" available to the public is one of the Congressional policies underlying the 1992 Cable Act. See 1992 Cable Act, §2(b)(1). The Act also

is intended to further the "substantial governmental interest" in the local origination of programming. Id. at §2(a)(10).

The Commission expressly has acknowledged that the development of regional sports programming services has contributed substantially to the overall increase in the diversity of programming services available to consumers. See, e.g., Competition, Rate Deregulation And the Commission's Policies Relating to the Provision of Cable Television Service, 5 FCC Rcd. 4962, 4966 n.8 (1990) (number of cable programming services doubled between 1984 and 1990, with regional sports services being a "primary growth area"). Since 1985, ARC has launched four regional sports programming services and is aware of numerous other new regional sports services.

Likewise, the Commission and the courts have determined that the public interest is served by live coverage of "outstanding local events [such] as community concerts, civic meetings, local sports events, and other programs of local consumer and social interest." United States v. Midwest Video Corp., 406 U.S. at 668-69, quoting National Broadcasting Co. v. United States, 319 U.S. 190, 203 (1943) (emphasis added). Regional sports programming services clearly promote the public interest by producing substantial quantities of locally produced programming featuring live coverage of sports events involving local teams. Particularly at the college and high school level, coverage of sports events which otherwise would

not be carried by broadcast television results in substantial benefits for the schools and their students and alumni.

Conclusion

The introduction and continued development of ARC's regional programming services have expanded substantially the sports programming available to television viewers. Nonetheless, the professional sports leagues and well-known collegiate athletic conferences have continued to air a substantial proportion of their contests on over-the-air television. Indeed, for those sports in which broadcast television networks and/or stations have an interest, they continue to have a predominant role in televising games. However, regional sports programming networks also have made significant contributions to the Commission's public interest goals of diversity and localism by carrying a wide variety of sports of regional interest which local broadcasters have continued to ignore. The net result has been expanded sports programming for television viewers.

March 29, 1993

Respectfully submitted,

AFFILIATED REGIONAL
COMMUNICATIONS, LTD.

By David B. Gluck
David B. Gluck
Mark R. Boyes
600 Las Colinas Boulevard
Suite 2200
Irving, Texas 75039
(214) 401-0099

Its Attorneys

**REGIONAL SPORTS PROGRAMMING SERVICES
IN WHICH ARC HAS AN OWNERSHIP INTEREST**

<u>Network</u>	<u>Region*</u>
Home Sports Entertainment	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas
Home Team Sports**	Maryland, North Carolina, Virginia, and Washington, D.C.
Prime Sports Network -- Rocky Mountain	Colorado, Kansas, Nebraska, New Mexico, South Dakota, and Wyoming
Prime Sports Network -- Midwest	Illinois, Indiana, Missouri, Ohio, and Wisconsin
Prime Sports Network -- Upper Midwest	Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin
Sunshine Network	Florida

* The regions include all or a portion of the designated states. Consequently, different portions of the same state may be included in multiple regions.

** ARC owns a 33.3 percent limited partnership interest in Home Team Sports. ARC also recently acquired a 33.3 percent general partnership interest in Prism/Philadelphia Sports Channel.

**REGIONAL SPORTS PROGRAMMING SERVICES
AFFILIATED WITH PRIME NETWORK**

In addition to the six regional services in which ARC has an ownership interest, the following regional sports programming services are affiliated with the Prime Network:

<u>Network</u>	<u>Region*</u>
Empire Sports Network	New York
KBL Sports Network	Maryland, Ohio, Pennsylvania, and West Virginia
Madison Square Garden	Connecticut, New Jersey, and New York
New England Sports Network	Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont
Prime Sports Network -- Intermountain West	Idaho, Montana, Nevada, Utah, and Wyoming
Prime Sports Northwest	Alaska, Idaho, Montana, Oregon, and Washington
Prime Ticket	Arizona, California, Hawaii, and Nevada
Pro Am Sports System	Michigan
SportSouth Network	Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

* The regions include all or a portion of the designated states. Consequently, different portions of the same state may be included in multiple regions.